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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,539	04/16/2004	Charles D. Kim	EMP-139US	2151
24314	7590	08/11/2005	EXAMINER	
JANSSON, SHUPE & MUNGER & ANTARAMIAN, LTD 245 MAIN STREET RACINE, WI 53403			COURSON, TANIA C	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 08/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/826,539

Applicant(s)

KIM, CHARLES D.

Examiner

Tania C. Courson

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-13 and 21-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-13 is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7 and 21-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 1 and 27 are objected to because of the following informalities:
  - a) Claim 1: in line 5, "potion" should read "portion";
  - b) Claim 27: it has no proper dependency since it states in line 1, that it remains dependent on cancelled claim 18. For examination purposes, the examiner has assumed that it is dependent on claim 26.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 21-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Jan (US D480,319 S).

Jan discloses in Figures 1-5, a level (see Attachment #1, where letters A<sup>C</sup><sub>A</sub> have been added by the examiner) comprising:

- a) a cylindrical handle (Fig. 1, A) having a substantially uniform diameter and including two ends defining a length therebetween (Fig. 1), an element-

- contacting means (Fig. 1, B) extending from the cylindrical handle portion and defining a length substantially matching the length of the cylindrical handle portion (Fig. 1) and level-indicating means mounted with respect to the element-contacting means (Fig. 1);
- b) wherein the level-indicating means is mounted in the cylindrical handle portion (Fig. 1);
  - c) wherein the element-contacting means includes a lower body portion (Fig. 1, C);
  - d) wherein the handle portion and lower body portion are integral (Fig. 1).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Earman (US 970,897) in view of Sebastini (US 3,545,091).

Earman discloses a level including the following:

With respect to claims 1-3 and 7:

- a) a body (5) including a cylindrical portion (23 & 24) and a trapezoidal portion (8) connected at an interface (Fig. 3), the trapezoidal portion having a level

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- face (9) for measuring a surface (Fig. 3), the cylindrical portion (23 & 24) defining a substantially uniform circular cross section with a diameter (Fig. 3), the diameter in parallel relationship with the level face of the trapezoidal portion (Fig. 1), at least one vial (8a) mounted in the body at a predetermined angular relationship to the level face (Fig. 1);
- b) wherein a first vial (8a) is mounted in the cylindrical portion (Fig. 3) at a predetermined angular relationship to the level face (Fig. 1);
  - c) wherein a second vial (26) is mounted in the cylindrical and trapezoidal portions (Fig. 1) at another predetermined angular relationship to the level face (Fig. 1);
  - d) wherein the cylindrical and trapezoidal portions are integrally formed (Fig. 3).

Earman does not disclose two hand-grip apertures allow a user to grip the cylindrical portion and the two hand-grip apertures being spaced apart along the interface.

Sebastini teaches a level that consists of two hand-grip apertures (13 and 16) to allow a user to grip the cylindrical portion (Fig. 1) and the two hand-grip apertures being spaced apart along the interface (Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level of Earman, so as to include hand grip apertures, as taught by Sebastini, so as to provide a means for increasing facility in transporting the device.

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6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Earman and Sebastini, as applied to claims 1-3 and 6-7 as stated above, and further in view of Jan.

Earman and Sebastini disclose a level as stated above in paragraph 5.

They do not disclose wherein cylindrical and trapezoidal portions overlap.

Jan teaches a level that contains wherein cylindrical and trapezoidal portions overlap (Fig. 4). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level of Earman and Sebastini, so as to include overlapping portions, as taught by Jan, in order to ensure a better connection between the portions during use of the level.

7. Claims 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jan in view of Sebastini.

Jan discloses a level, as stated above in paragraph 3.

Jan does not disclose two hand-grip apertures located in a lower body portion adjacent a handle portion, a hand-grip aperture located in a lower body portion adjacent a handle portion, wherein a cylindrical portion is connected to the lower body portion at web portions surrounding the hand-grip aperture.

Sebastini teaches a level that consists of two hand-grip apertures (13 and 16) located in a lower body portion adjacent a handle portion (Fig. 1), a hand-grip aperture (13) located in a lower body portion adjacent a handle portion (Fig. 1), wherein a cylindrical portion is connected

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to the lower body portion at web portions (14) surrounding the hand-grip aperture (Fig. 1).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the level of Jan, so as to include hand grip apertures and a web, as taught by Sebastini, so as to provide a means for increasing facility in transporting the device.

***Allowable Subject Matter***

8. Claims 8-13 are allowed.

***Response to Arguments***

9. Applicant's arguments filed on May 13, 2005 have been fully considered but they are not persuasive with respect to claims 1-3 and 5-7 and with respect to newly cited claims 21-27.

10. In response to applicant's argument that the Earman reference fail to show "a cylindrical portion", is clearly shown in the section view of Figure 3, furthermore it clearly shows a "substantially uniform circular cross section with a diameter as also seen in Figure 3.

***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

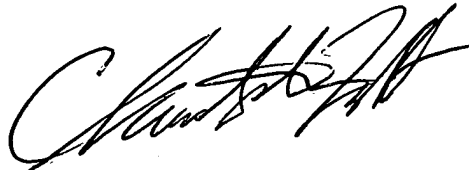
The fax number for this Organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR



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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Diego F.F. Gutierrez', is positioned above the printed name.

DIEGO F.F. GUTIERREZ  
SUPERVISORY PATENT EXAMINER  
GROUP ART UNIT 2859

TCC  
August 8, 2005

CHRISTOPHER W. FULTON  
PRIMARY EXAMINER

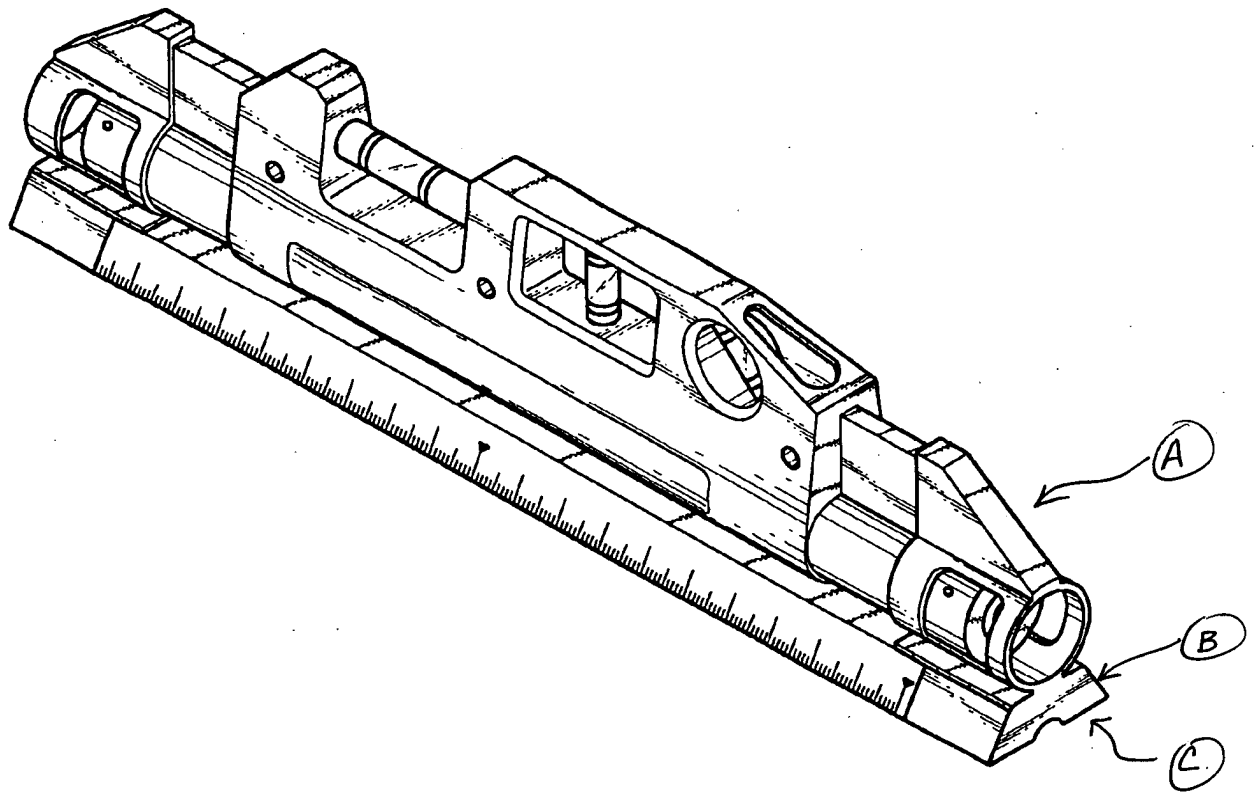


FIG. 1